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owner enjoys in association with his neighbors, expressed in the maxim *sic utere tuo ut alienum non laedas*. So, if in raising the grade of a street there is an encroachment of the filling upon the abutting land,<sup>13</sup> or a backing of water so as to overflow it,<sup>14</sup> or an obstruction to a natural watercourse to the injury of adjoining land,<sup>15</sup> compensation must be made. The right of lateral support is also a part of the abutter's property, and recovery has been allowed when the lowering of the street grade has caused an actual subsidence of part of the adjacent land.<sup>16</sup> In addition to these, new rights are gained with the establishment of the street — easements of access, of light and air.<sup>17</sup> If a street is vacated and closed in front of property, there is a taking of these appurtenant easements for which compensation must be made.<sup>18</sup> It would seem that the raising or lowering of the street grade may have an equivalent effect. But as these rights are considered to be qualified, that is, subject to usual street uses, and as a change of grade is a normal street use, there is no taking of property if these rights are interfered with by regrading.<sup>19</sup> It is evident, however, that an alteration of these easements may cause great damage to abutting property. Recognition of this hardship has led to the enactment of statutes in many jurisdictions giving compensation for all injuries incident to a change of grade.<sup>20</sup> Beginning with Illinois in 1870, several states<sup>21</sup> have revised their constitutions, providing that private property shall not be "taken or damaged" for public use without just compensation. All damage resulting to abutting property by reason of a change of street grade should be within such a provision.<sup>22</sup>

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THE NATURE OF SALVAGE SERVICE. — Remuneration to those who have saved property from destruction at sea is said to be taken from the Roman law of *negotiorum gestio*, by which one who, without contract, had cared for the business or the property of an absent person was entitled to be compensated for his outlay.<sup>1</sup> But it should be noted that the doctrine of salvage goes beyond the Roman law. In England prior to the seventeenth century the right of a salvor was a precarious one, being almost wholly dependent upon the generosity of the Lord High Admiral or upon that of

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<sup>13</sup> *Vanderlip v. Grand Rapids*, 73 Mich. 522, 41 N. W. 677 (1889); *Hendershot v. Ottumwa*, 46 Ia. 658 (1877); *Broadwell v. City of Kansas*, 75 Mo. 213 (1881).

<sup>14</sup> *Pumpelly v. Green Bay Co.*, 13 Wall. (U. S.) 166 (1871); *Grand Rapids Booming Co. v. Jarvis*, 30 Mich. 308, 320, 321 (1874).

<sup>15</sup> *Conniff v. San Francisco*, 67 Cal. 45, 7 Pac. 41 (1885).

<sup>16</sup> *Dyer v. St. Paul*, 27 Minn. 457 (1881); *Nichols v. City of Duluth*, 40 Minn. 389, 42 N. W. 84 (1889); *Park v. Seattle*, 5 Wash. 1, 31 Pac. 310 (1892).

<sup>17</sup> *Williams v. Los Angeles*, 150 Cal. 592, 89 Pac. 330 (1907); *Story v. N. Y. St. Ry. Co.*, 90 N. Y. 122 (1882). See 1 LEWIS, EMINENT DOMAIN, 3 ed., § 120.

<sup>18</sup> *Pearsall v. Supervisors*, 74 Mich. 558, 42 N. W. 77 (1889); *Egerer v. N. Y. Cent. and H. R. R. Co.*, 130 N. Y. 108, 29 N. E. 95 (1891); *Heinrich v. St. Louis*, 125 Mo. 424, 28 S. W. 626 (1894).

<sup>19</sup> *McCullough v. Village of Campbellsport*, 123 Wis. 334, 101 N. W. 709 (1904).

<sup>20</sup> See 1 LEWIS, EMINENT DOMAIN, 3 ed., §§ 316-335, for collection of statutes.

<sup>21</sup> See 1 LEWIS, EMINENT DOMAIN, 3 ed., § 346, note 16.

<sup>22</sup> *City of Bloomington v. Pollock*, 141 Ill. 346, 31 N. E. 146 (1892); *Sheehy v. Kansas City Cable Ry. Co.*, 94 Mo. 574, 7 S. W. 579 (1887).

<sup>1</sup> See *The Calypso*, 2 Hagg. Adm. 209, 218 (1828). Also see DIG., III, 5.

the owner of the salvaged property.<sup>2</sup> But to-day remuneration for salvage is a legal right, governed by a due regard for the benefit received, combined with a just consideration for the public interest in the promotion and safe conduct of marine commerce.<sup>3</sup>

Salvage in its proper signification applies only to assistance which results in the preservation of a vessel or its lading,<sup>4</sup> but statutory extension has widened its scope to include the saving of human life from a vessel in distress.<sup>5</sup> A recent Canadian case illustrates this phase of salvage.<sup>6</sup> The service is so exclusively maritime in its nature that admiralty has undisputed jurisdiction, but a common-law court has a concurrent jurisdiction to allow recovery in an action *in personam* when the labor has been performed at request.<sup>7</sup> Salvage may arise upon a contract,<sup>8</sup> although the majority of cases involve services rendered to an owner of property who has had no contractual relation with the salvor.<sup>9</sup> The right acquired may be enforced *in rem* against the property saved,<sup>10</sup> or *in personam* against the party for whose benefit the service was performed,<sup>11</sup> but both remedies may not be invoked concurrently.<sup>12</sup> In no instance can the recovery for salvage exceed the value of the property saved.

Salvage proceeds upon a theory somewhat analogous to the quasi-contractual right to prevent unjust enrichment, but is distinguishable from the latter in that the salvor is entitled to recover when no request for assistance has been made;<sup>13</sup> and, secondly, in that a right *in rem* is secured against the property saved. Such a right is distinct from a common-law lien in that the salvor secures a right *in rem* which is not dependent upon the possession of the *res*. The basis for this right, as well as for all maritime liens, would seem to be the urgent need in early

<sup>2</sup> See SELDEN SOCIETY, 2 SELECT PLEAS IN THE COURT OF ADMIRALTY, Intro. xxxvi.

<sup>3</sup> See *Mason v. The Blaireau*, 2 Cranch (U. S.), 239, 265 (1804). Salvage remuneration operates (1) as compensation for labor done, (2) as reward to the particular salvors, and (3) as an inducement for others to render like meritorious services. The *Sarah*, 1 C. Rob. 313, note (1800).

<sup>4</sup> The *Gas Float Whitton No. 2*, [1897] A. C. 337, and cases collected therein. American cases have allowed salvage for a raft of logs. *Whitmire v. Cobb*, 88 Fed. 91 (1898); *Bywater v. A Raft of Piles*, 42 Fed. 917 (1890). This is contrary to the principles upon which salvage is founded, unless a raft may be included within the category of vessels.

<sup>5</sup> MERCHANT SHIPPING ACT of 1894, 57 & 58 VICT. c. 60, § 544. Also enacted in Canada. See STAT. OF CANADA 1895. See also 1916 U. S. COMP. STAT. § 7992. When life salvage is allowed it creates a lien upon the ship and cargo saved which has priority over all other salvage claims. The *Fusilier*, Br. & Lush. 341 (1865). Prior to the enactment of such statutes, if passengers and ship were both saved, the owner of the vessel paid a greater amount of salvage than the mere rescue of the ship would entail. The *Bremen*, 111 Fed. 228 (1901). See 19 HARV. L. REV. 310.

<sup>6</sup> *Cloyoquot Sound Canning Co. v. S. S. Princess Adelaide*, 48 Dom. L. R. 478 (1919). See RECENT CASES, p. 480, *infra*.

<sup>7</sup> *Newman v. Walters*, 3 Bos. & P. 612 (1804).

<sup>8</sup> The *Kennebec*, 231 Fed. 423 (1916). This case distinguishes a towage service which merely expedites a voyage, from a salvage service which gives relief from distress or danger.

<sup>9</sup> The *Apache*, 124 Fed. 905 (1903); The *R. R. Rhodes*, 82 Fed. 751 (1897).

<sup>10</sup> The *Sabine*, 101 U. S. 384 (1879).

<sup>11</sup> The *Cargo*, Ex Port Victor, 17 T. L. R. 378 (1901).

<sup>12</sup> The *Sabine*, *supra*.

<sup>13</sup> See *Falcke v. The Scottish Ins. Co.*, 34 Ch. D. 234, 248 (1886).

commercial life for maximum shipping facilities coupled with the animate, mobile character of a ship, which makes a right *in rem* against a vessel comparable to a right *in personam* against an individual.

No right to remuneration for salvage exists unless certain requisites have been fulfilled. The early cases required that there be an actual and immediate peril as a condition precedent to a right of recovery.<sup>14</sup> But to-day, by going more fully into the circumstances surrounding the alleged salvage, the requirement has been relaxed to a reasonable apprehension of impending danger. Likewise, the growth of the policy in our law to preserve property irrespective of the individual interests involved has combined to make a reasonable risk of danger sufficient.<sup>15</sup> *The Andrew Kelly v. The Commodore*<sup>16</sup> shows that the serious crippling of a vessel's navigational powers may satisfy the requirement of peril though the disability was not sufficiently great as to have prevented her from making port. It is the danger of the salvaged property and not that of the salvors which is material in determining whether a salvage service has been performed. Further, it is necessary that the act be voluntary. This excludes services which are performed where the legal duty to supply aid already exists, as in the case of seamen aboard the salvaged vessel,<sup>17</sup> or persons employed for the express purpose of rescue.<sup>18</sup> Thirdly, to constitute a salvage service property must actually have been saved through the efforts of the party claiming reward.<sup>19</sup> However, if such efforts proved unsuccessful in the preservation of property, nevertheless, if they were requested, recovery on the common count may be had in a common-law court or in admiralty as compensation in the nature of salvage.

Once a court has determined that a salvage service has been performed, many considerations pertaining to the work arise in the estimation of damages. The degree of danger of the salvaged property, the risk incurred by the salvors, their labor and skill, the time occupied in performing the service, the value of the property saved and its proportion to the value of the property in danger, all combine to determine the extent of the salvor's right.<sup>20</sup> But it is fundamental to note that these are incidents and not requisites of salvage service.

<sup>14</sup> *The Henrietta*, 3 Hagg. Adm. 345, notes (1837); *The Giacomo*, 3 Hagg. Adm. 344 (1836).

<sup>15</sup> *The Urko Mendi*, 216 Fed. 427 (1914); *The Evolution*, 199 Fed. 514 (1912). "It is not necessary, I conceive, that the distress should be actual or immediate, or that the danger should be imminent and absolute; it will be sufficient if, at the time the assistance is rendered, the ship has encountered any damage or misfortune which might possibly expose her to destruction if services were not rendered." Per Dr. Lushington in *The Charlotte*, 3 W. Rob. 68, 71 (1848).

<sup>16</sup> 48 Dom. L. R. 213 (1919). See RECENT CASES, *infra*, p. 453.

<sup>17</sup> *The C. P. Minch*, 73 Fed. 859 (1896); *The Nebraska*, 75 Fed. 598 (1895). But seamen are entitled to salvage for services rendered after a final abandonment of the ship. *The Aguan*, 48 Fed. 320 (1891); *The Umattila*, 29 Fed. 252 (1886). See 32 HARV. L. REV. 835 as to what constitutes abandonment.

<sup>18</sup> See *The Resolute*, 168 U. S. 437, 441 (1897).

<sup>19</sup> *The Henry Steers, Jr.*, 110 Fed. 578 (1901); *The Tolomeo*, 7 Fed. 497 (1881); *The Huntsville*, Fed. Cas. No. 6, 916 (1860).

<sup>20</sup> See *The Blackwall*, 10 Wall. (U. S.) 1, 14 (1869). "Where all the elements are found to exist in a high degree, a large reward is given; where few of them are found, or they are present only in a low degree, the salvage remuneration awarded is comparatively small." KENNEDY, CIVIL SALVAGE, 2 ed., 133.